Supreme Court, U.S.
FILED
FEB 20 1998
CLERK

No. 97-1041

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

MAENETTE B. SMITH, *et vir.*,

Petitioners,

v.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO
THE COURT OF SPECIAL APPEALS OF MARYLAND

RESPONDENTS' BRIEF IN OPPOSITION

ISAAC H. MARKS
(Counsel of Record)
Office of the General Counsel
4th Floor
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
(301) 952-4501
Attorney for Respondent M-NCPPC

MAURENE EPPS WEBB
J. MICHAEL DOUGHERTY
(Counsel of Record)
Office of Law – 5th Floor
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
(301) 952-5225
Attorneys for Respondent Prince George's County

Washington, D.C. • THIEL PRESS • (202) 328-3286

32 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether certiorari is warranted where the decisions of the Maryland Court of Special Appeals were not inconsistent and did not deny Petitioners due process or equal protection under the United States Constitution?

2. Whether Petitioners have sufficiently demonstrated that the refusal by the Maryland state courts to apply the doctrines of *res judicata* and collateral estoppel warrants certiorari?

3. Whether certiorari is warranted where the Maryland state courts held that a denial of Petitioners' building permit application did not constitute an unconstitutional taking of property where Petitioners failed to avail themselves of the administrative remedies available to obtain the requested permit approval for almost four (4) years?

Page

TABLE OF CONTENTS

Questions Presented i

Statement Of The Case 1

Reasons for Denying the Petition 8

I. The Decisions Of The Maryland Court Of Special Appeals Were Not Inconsistent. 8

II. The Maryland Courts Correctly Declined To Apply The Doctrines Of *Res Judicata* And Collateral Estoppel 10

III. The Recommendation Of Denial Of Petitioners' Building Permit Application Did Not Constitute An Unconstitutional Taking Of Property 12

Conclusion 14

Appendices:

Appendix A – Application For Approval Of Preliminary Subdivision Plat: Marlborough House A-1

Appendix B – Zoning Map A-3

Appendix C – Base Map A-4

Appendix D – Zoning Overlay Map A-5

Appendix E – Letter, dated May 1, 1990 from Isaac H. Marks A-6

Appendix F – Letter, dated May 4, 1990 from Jess Joseph Smith, Jr. A-8

Appendix G – Deposition Excerpts of Roscoe Tippett A-10

Page

Reference To Lodgings:
No. 1 – Subdivision Plat for Lot 1 - Content.....3, A-13
No. 2 – Subdivision Plat for Lot 2 - Marlborough House.....3, A-13

TABLE OF AUTHORITIES

Cases:

Murray International Freight Corporation v. Graham, 315 Md. 543, 555 A.2d 502 (1989).....12

Richards v. Jefferson County, Alabama, 517 U.S. ___, 116 S.Ct. 1761, 135 L.Ed.2d 76 (1996).....11

Warner v. German, 100 Md. App. 512, 642 A.2d 239 (1994)..... 12

Statutes:

42 U.S.C. §1983..... 5, 8

Annotated Code of Maryland, Article 28 11
Section 7-111 2
Section 8-104 2

STATEMENT OF THE CASE

The Petition for Writ of Certiorari is the culmination of an approximate ten (10) year dispute between Petitioners and Respondents The Maryland-National Capital Park and Planning Commission (hereinafter 'M-NCPPC") and Prince George's County, Maryland (hereinafter the "County"). Petitioners Jess Joseph Smith, Jr.[1] and his wife, Maenette B. Smith own a parcel of land, consisting of 2 lots, located at 14520 Church Street in Upper Marlboro, Maryland. This property, which was an undivided parcel until 1987, was located in a dual zoning category of R-80 (residential) and C-S-C (commercial).

In 1987, Petitioners subdivided their parcel into 2 adjacent lots designated as Lot 1 - Content and Lot 1 - Marlborough House (hereinafter "the Subject Property").[2] Petitioners designated Lot 1 - Content in the R-80 zoning category[3] and the Subject Property in the C-S-C zoning category. (*See* Appendix A, p. A-1 *infra.*)

---

[1] Jess Joseph Smith, Jr. is also *pro se* counsel for Petitioners.

[2] Respondent M-NCPPC initially denied Petitioners' applications for subdivision of Lot 1 - Content and Lot 1 - Marlborough House (the Subject Property) due to Petitioners' failure to comply with the then applicable requirements of the Prince George's County Subdivision Regulations regarding the widening of an adjacent street and historic preservation. Petitioners appealed to the Circuit Court for Prince George's County, Maryland on or about July 1986 (hereinafter referred to as the "Subdivision Case"). (App. 116a.) The circuit court reversed and remanded the case to Respondent M-NCPPC, whereby the Petitioners' applications for subdivision were filed.

[3] Lot 1 - Content is not the subject of the instant Petition.

In subdividing their undivided parcel, Petitioners sought to divide the parcel along the zoning line which ran through the property.

After subdividing their parcel into two lots, Respondent M-NCPPC modified the base map within the zoning map for Petitioners' property to reflect the creation of both lots.[4] Respondent M-NCPPC is charged with the statutory responsibility for "planning, platting, and zoning functions" in Prince George's and Montgomery Counties, Maryland pursuant to Annotated Code of Maryland, Article 28, Section 7-111. (App. 146a-147a.) In accordance with its statutory charge, Respondent M-NCPPC maintains all zoning overlay maps and base maps in Prince George's County.[5] Although zoning overlay maps are prepared by Respondent M-NCPPC, said maps are prepared for the benefit and approval of the Prince George's County District Council (hereinafter "District Council"),[6] which is charged with the statutory authority to change or amend, *inter alia,* **zoning** boundary lines in accordance with Annotated Code of Maryland, Article 28, Section 8-104. (App. 153a-154a.) The District Council, however, does not approve modifications to base maps (e.g., changes to property boundary lines, subdivisions of property, etc.). (*Id.*)

---

[4] A zoning map is comprised of a zoning overlay map and base map. (*See* Appendix B, p. A-3, *infra.*) A base map provides context to a zoning map by depicting geographical data such as property boundary lines, streets and roads (*See* Appendix C, p. A-4, *infra.*). A zoning overlay map only depicts land use zoning categories and zoning boundary lines within the County which have been approved by the Prince George's County District Council. (*See* Appendix D, p. A-5, *infra.*)

[5] For the purposes of Respondents' instant Brief, reference is made only to the maps maintained in Prince George's County.

[6] The Prince George's County Council sits as the District Council when acting on zoning matters.

In November 1989, Petitioners filed a building permit application with the Prince George's County Department of Environmental Resources (hereinafter "DER") to construct an office building on the Subject Property. In accordance with the Prince George's County Zoning Ordinance ("Zoning Ordinance"), the County referred Petitioners' permit application to Respondent M-NCPPC for a mandatory review of compliance with the Zoning Ordinance.[7] Upon review of Petitioners' subdivision plats for Lot 1 - Content (*see* Lodging No. 1) and Lot 1 - Marlborough House (*see* Lodging No. 2), it was evident that the Subject Property was split-zoned, with part zoned residential R-80 and the other part zoned commercial C-S-C.

The decision of the Board of Appeals in the related Administrative Appeal (discussed, p. 5 *infra*), which is binding on Petitioners[8] and on which they rely, established that the zoning line for the C-S-C portion of Petitioners' undivided parcel is measured **400 feet** from the center line of an adjacent street known as Water Street. (App. 134a, ¶ 13.) A review of Petitioners' subdivision plat for Lot 1 - Content (*see* Lodging No. 1) reveals that the subdivision line between Lot 1 - Content and Lot 1 - Marlborough House is **411 feet to the corner** of Water Street. Thus, the subdivision line for the Subject Property could not possibly align with the zoning line inas-

---

[7]The Prince George's County Zoning Ordinance requires DER to refer all applications for grading, building or use and occupancy permits to Respondent M-NCPPC to review for compliance with the Zoning Ordinance or any conditions placed on the Subject Property prior to issuing a permit for same.

[8]The decision of the Board of Appeals is *res judicata* as to Petitioners inasmuch as they appeared before the Board, presented evidence, represented their interests and had the opportunity to (and did) appeal the Board's decision.

much as the subdivision line is actually greater than 411 feet from the *centerline* of Water Street since there is additional footage from the corner of Water Street to the centerline of same. (*Id.*) The misalignment of the subdivision and zoning lines on the Subject Property is further evidenced by the fact that the professional surveyor hired by Petitioners to survey the land acknowledged in a subsequent deposition that he did not know that the zoning line on the undivided parcel was measured from the center line of Water Street (discussed, *infra*). (*See also* Appendix G, p. A-10, *infra.*)

Respondent M-NCPPC informed Petitioners that it could not recommend approval of a building permit for the Subject Property since the Zoning Ordinance did not allow the use of the residential R-80 zoned section of the Subject Property with the commercial zoned section without the approval of a special exception. Respondent M-NCPPC requested that Petitioners correct the dual-zoning status of Lot 1 - Marlborough House, but Petitioners refused to take any remedial action. Accordingly, Respondent M-NCPPC had no other alternative than to recommend denial of Petitioners' building permit application to DER until said dual-zoning was corrected.

On January 24, 1990, DER issued a notice to Petitioners of the recommendation of denial by Respondent M-NCPPC, which also stated that Petitioners should contact Respondent M-NCPPC to correct any problems with their building permit application before a building permit could be issued. (App. 142a.) Prior to the issuance of the notice from DER, however, Petitioners filed a complaint for damages on or about December 28, 1989 against Respondents M-NCPPC and Prince George's County, and the Town of Upper Marlboro, Maryland. Said complaint was subsequently amended to include

the Prince George's County District Council as a defendant, and sought declaratory relief, an injunction, and damages pursuant to 42 U.S.C. §1983 for an alleged unconstitutional taking of Petitioners' property.[9] Petitioners alleged in their amended complaint, *inter alia*, that all of the Subject Property was in the C-S-C zone, and that Respondents "rezoned" the Property "without notice, hearing, or other procedural due process."

On February 14, 1990, Petitioners filed a parallel administrative appeal to the Prince George's County Board of Appeals (hereinafter the "Board of Appeals") challenging the County's denial of their building permit application. After several hearings, the Board of Appeals overruled the recommendation of denial by M-NCPPC. Thereafter, Petitioners and Respondents M-NCPPC and the County appealed the decision of the Board of Appeals to the circuit court (hereinafter referred to as the "Administrative Appeal"). The circuit court dismissed M-NCPPC as a party, holding that M-NCPPC did not have standing to appeal the decision of the Board of Appeals inasmuch as it was not aggrieved by said decision. Respondent M-NCPPC filed an interlocuturoy appeal of its dismissal to the Maryland Court of Special Appeals, the intermediate state appellate court. While pending, the Maryland Court of Appeals, the highest state court, *sua sponte*, granted *certiorari* and upheld the dismissal of Respondent M-NCPPC as a party to the Administrative Appeal in that M-NCPPC was not aggrieved by the decision of the Board of Appeals.

Since Petitioners filed a complaint for damages prior to the resolution of the Administrative Appeal, Respond-

---

[9]The Town of Upper Marlboro, Maryland and the Prince George's District Council were subsequently dismissed as defendants.

ents M-NCPPC and the County filed motions to dismiss Petitioners' amended complaint for failure to exhaust administrative remedies. The circuit court granted Respondents' motions and dismissed Petitioners' amended complaint. Thereafter, Petitioners appealed said dismissal to the Court of Special Appeals, which reversed the dismissal and remanded the case with direction for the circuit court to retain jurisdiction of the case pending the outcome of the Administrative Appeal (hereinafter "First CSA Decision"). On remand, the circuit court issued a stay of Petitioners' complaint for damages pending the outcome of the Administrative Appeal.

In May 1990, in the interest of resolving the dispute, Respondent M-NCPPC proposed to survey Petitioners' property, at its own cost, to corroborate said dual-zoning status in order to obtain Petitioners' cooperation in correcting the dual-zoning. (*See* Appendix E, p. A-6, *infra.*) Petitioners acknowledged receipt of Respondent M-NCPPC's proposal, but declined same. (*See* Appendix F, p. A-8, *infra.*)

Petitioners had three administrative options to correct the dual-zoning status of the Subject Property. The first option was to file a Zoning Map Amendment which relates specifically to the Subject Property, and could have essentially been filed at any time. The second option was to file a Sectional Map Amemdment, which is a comprehensive rezoning process, that would have permitted the rezoning of the Subject Property and all land within a designated planning area in Prince George's County. (Petitioners ultimately pursued this option to have the Subject Property rezoned to all C-S-C, discussed p. 7 *infra.*) The final option was to file a zoning special exception to allow the use of the residential R-80 section of the Subject Property with the commercial C-S-C sec-

tion. Petitioners refused to pursue either option until June of 1993.

Prior to the conclusion of the Administrative Appeal, Petitioners, by letter dated June 16, 1993, requested that the dual-zoned section of the Subject Property in the 1994 Sectional Map Amendment which was then pending before the District Council. Respondent M-NCPPC agreed with Petitioners' request, and the Subject Property was rezoned from C-S-C and R-80 to all C-S-C by the District Council effective on May 24, 1994. It is noteworthy that the District Council's action to rezone the Subject Property confirmed that the Subject Property contained a split zoning classification that required correction.

Once the Subject Property was rezoned entirely to C-S-C, the County approved Petitioners' building permit application and issued the requested permits. Thereafter, Petitioners and Respondent Prince George's County withdrew their appeal of the Administrative Appeal since Petitioners had obtained the required rezoning of the dual-zoned portion of the Subject Property.

Following the dismissal of the Administrative Appeal, and after the parties completed discovery on Petitioners' complaint for damages, Petitioners filed a motion for summary judgment while Respondents filed cross-motions. On April 10, 1996, the circuit court denied Petitioners' motion and granted Respondents' cross-motions, holding that: (1) Respondent M-NCPPC had the authority to update base maps; (2) Respondent M-NCPPC did not cause the Subject Property to be dual-zoned; (3) there was no governmental taking of the Subject Property by the County; (4) *res judicata* was not applicable as to the zoning classification of the Subject Property and (5) Petitioners were responsible for the delay in the issuance

of their permit by failing to pursue any of the administrative options within a reasonable time. (App. 15a-22a.)

Petitioners appealed to the Court of Special Appeals, which affirmed the circuit court's decision (hereinafter "Second CSA Decision"). Petitioners then filed a request for a Writ of Certiorari to the Maryland Court of Appeals, which was denied on August 22, 1997.

REASONS FOR DENYING THE PETITION

I.

THE DECISIONS OF THE MARYLAND COURT OF SPECIAL APPEALS WERE NOT INCONSISTENT.

After Petitioners filed their amended complaint for damages in 1989, Respondents filed motions to dismiss for Petitioners' failure to exhaust their administrative remedies. Petitioners responded by filing a motion for summary judgment. In the First CSA Decision, filed April 28, 1992, the Court of Special Appeals was asked to determine if the circuit court should have dismissed the Petitioners' case for failure to exhaust administrative remedies and whether the Petitioners' motion for summary judgment should have been granted. (App. 1a-12a.) The Court of Special Appeals held that where a claim for damages is alleged pursuant to 42 U.S.C. §1983, the circuit court should not dismiss a petitioner's case for failure to exhaust administrative remedies, but should retain jurisdiction over the case until such time that the administrative remedies have been exhausted. That Court also stated that summary judgment was not appropriate since, at that time, there was a question of material fact as to whether a "rezoning" of Petitioners' property had occurred. (App. 11a-12a.) At the time of the First CSA Decision, the parties had not conducted discovery.

Following the remand of the First CSA Decision and after discovery had been completed, Petitioners filed a second motion for summary judgment alleging that there were no material facts in dispute and that they were entitled to judgment as a matter of law.[10] Respondents M-NCPPC and Prince George's County along with the District Council, filed cross-motions for summary judgment. The circuit court granted Respondents' and the District Council's cross-motions but denied the Petitioners' motion, holding: (1) that Respondent M-NCPPC was authorized to make changes to the base maps to reflect the subdivision of the Subject Property; (2) that Respondent M-NCPPC did not cause the Subject Property to be dual-zoned; (3) that there was no governmental taking by the County since Petitioners refused to take remedial action to correct the dual zoning status of the Subject Property; and (4) that *res judicata* was not applicable to the case inasmuch as (i) Respondent M-NCPPC did not have standing to appeal the decision in the Administrative Appeal and (ii) the zoning classification of the Subject Property was not previously subject to litigation. (App. 15a-23a.)

Since Petitioners and Respondents conducted discovery prior to filing motions and cross-motions for summary judgment, unlike when the First CSA Decision was rendered, the circuit court had ample facts before it to make a determination that there was no genuine dispute of any material facts. The Court of Special Appeals

---

[10] Notwithstanding Petitioners' assertion that both decisions of the Court of Specials were inconsistent, it should be noted that, after the First CSA Decision, Petitioners first filed a motion for summary judgment following the completion of discovery. One can only wonder whether Petitioners would assert their claim of inconsistency if their motion for summary judgment had prevailed. As discussed above, however, said decisions were not inconsistent.

reviewed the decision on the facts and evidence, and found no error in the decision. Moreover, after reviewing the First and Second CSA Decisions, it is not inconsistent for both decisions to reach different conclusions in light of the different questions raised on appeal. (*See* App. 2a and 24a-25a.)

II.

THE MARYLAND COURTS CORRECTLY DECLINED TO APPLY THE DOCTRINES OF *RES JUDICATA* AND COLLATERAL ESTOPPEL.

Petitioners also erroneously assert that the decision of the Board of Appeals in the Administrative Appeal is *res judicata* as to Respondents and is the "law of this case with respect to all parties and issues and is controlling on them . . . ," and that the Maryland Courts did not correctly apply the doctrine. Petitioners further argue that Respondents are collaterally estopped by the ruling in the 1986 Subdivision Case.[11]

Since Respondent M-NCPPC's appeal of the Administrative Appeal was dismissed, and Respondent M-NCPPC was precluded from appealing same for lack of standing (*see* App. 110a-111a), said decision is not binding on Respondent M-NCPPC. Further, Petitioners

---

[11] Petitioners would have this Honorable Court believe that the 1986 Subdivision Case is relevant to the instant case. It is not. A review of the circuit court's ruling in that case (App. 116a) shows that the holding has absolutely no applicability to the instant litigation. The order of the circuit court only reversed Respondent M-NCPPC's denial of Petitioners' applications for subdivision plats for the Subject Property (*see e.g.*, Appendix A, p. A-1, *infra*, and App. 116a). At no time did said order address the zoning status of Petitioners' property, which Petitioners self-designated. (*Id.*) Accordingly, the doctrines of *res judicata* and collateral estoppel are not applicable to the instant case. *See also* footnote 2, *supra*.

erroneously assert that Respondents "are in privity as to all issues decided in both the subdivision case and the administrative appeal case." (Petitioner's Petition, p. 25.) This Court has held, however, that to establish "privity," it must be shown that ". . . in certain limited circumstances, a person, although not a party, has his interests adequately represented by someone with the same interests who is a party." *Richard v. Jefferson County, Alabama,* 517 U.S. ___ , 116 S.Ct. 1761, 1766, 135 L.Ed.2d 76, 84 (1996). Respondents M-NCPPC and Prince George's County remained parties in the instant action and related cases, except when M-NCPPC was dismissed as a party to the Administrative Appeal, and represented their separate interests.[12] Petitioners have failed to establish privity between Respondents and would have Respondents penalized for exercising judicial economy in the filing of its pleadings.

Respondent M-NCPPC is a state created bi-county agency, serving Montgomery and Prince George's Counties, established by the Maryland legislature pursuant to Annotated Code of Maryland, Article 28. Respondent Prince George's County is a Maryland chartered county which was also established by the Maryland legislature, albeit for different purposes. Both Respondents are separate and distinct entities which happened to have similar positions in the instant litigation due to Petitioners' allegations. As such, the administrative decision of the Board of Appeals is not *res judicata* as to Respondents M-NCPPC or Prince George's County.

---

[12]When Respondent M-NCPPC was dismissed as a party from the Administrative Appeal, Petitioners are correct in stating that counsel for M-NCPPC *individually* entered his appearance on behalf of Respondent Prince George's County. At no time, however, did Respondent M-NCPPC represent Respondent Prince George's County, or *vice versa.*

It is a well-established principle that *res judicata* does not apply with respect to an administrative decision if "the party against whom it is sought to be asserted could not have appealed from the decision that allegedly embodied the fact-finding in question." *Murray International Freight Corporation v. Graham,* 315 Md. 543, 545, 555 A.2d 502, 503 (1989) (emphasis added); *See also Warner v. German,* 100 Md. App. 512, 642 A.2d 239 (1994) (requirement that collateral estoppel cannot bind a second party by a previous decision unless that party had an appropriate opportunity to appeal the first decision).

III.

THE RECOMMENDATION OF DENIAL OF PETITIONERS' BUILDING PERMIT APPLICATION DID NOT CONSTITUTE AN UNCONSTITUTIONAL TAKING OF PROPERTY.

Petitioners' assertion that the Subject Property was subject to an unconstitutional taking is less than specious. As noted by the circuit court, Petitioners were the cause of the delay in the issuance of a building permit for the Subject Property by failing to pursue one of the three administrative options available to them: (1) to request a zoning special exception to utilize the residential R-80 zoned section of the Subject Property for commercial purposes with the C-S-C zoned section; (2) request a Zoning Map Amendment to have said R-80 section re-zoned to C-S-C or (3) request a Sectional Map Amendment to have said R-80 section re-zoned to C-S-C. In the

instant case, Petitioners' waited approximately four (4) years before seeking and obtaining a Sectional Map Amendment for the Subject Property.[13]

In May 1990, Petitioners further spurned an expeditious resolution of the purported dispute by declining Respondent M-NCPPC's offer to have the Subject Property surveyed, at M-NCPPC's cost, to confirm that the Subject Property was located in split-zoning categories. (*See* Appendices E & F, pp. A-6, A-8, *infra.*) Respondent M-NCPPC offered to recommend approval of Petitioners' permit application if the Subject Property was not split-zoned, but requested that Petitioners pursue one of the three (3) administrative options if same was split-zoned. Petitioners declined the offer of Respondent M-NCPPC. As such, the trial court correctly noted the following of Petitioners: "to equate self-imposed delay with deprivation at the hands of the government is wholly disingenuous." (App. 21a.)

Finally, the crux of the case is that Petitioners' surveyor failed to correctly subdivide the Subject Property. In a sworn deposition, Petitioners' surveyor stated that he did not know that the zoning line on the Subject Property was measured from an adjacent street (*See* Appendix G, p. A-10, *infra.*)

---

[13] Although the Section Map Amendment process, under which Petitioners ultimately had the Subject Property rezoned, became available in 1993, Petitioners could have filed a Zoning Map Amendment or special exception at anytime. (*See* discussion, pp. 6, 12, *supra.*)

CONCLUSION

In the instant case, there are no important questions of federal law for this Honorable Court to settle. Petitioners essentially assert nothing more than an alleged misapplication of a properly stated rule of law. In reviewing Petitioners' petition for certiorari to the Maryland Court of Appeals, the state court of last resort, said court denied the petition, noting that "there has been no showing that review by certiorari is desirable and in the public interest." (App. 62a.) Then, as now, Petitioners have failed to show an appropriate basis for the grant of certiorari.

Petitioners simply failed to align the subdivision line between Lot 1 - Content and Lot 1 - Marlborough House with the zoning line on the property, and were the sole cause of any delay in the corrective rezoning of the Subject Property. As such, there is no genuine dispute as to any material fact with regard to the instant case, and the trial court properly granted Respondents' cross-motions for summary judgment.

Wherefore, Respondents M-NCPPC and Prince George's County respectfully request that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

RICHARD ROMINE
General Counsel

ISAAC H. MARKS
Associate General Counsel

County Administration Building
14741 Gov. Oden Bowie Drive
Upper Marlboro, Maryland 20772
(301) 952-4501

PRINCE GEORGE'S COUNTY, MARYLAND

BARBARA HOLTZ
Acting County Attorney

MAURENE EPPS WEBB
Acting Deputy County Attorney

J. MICHAEL DOUGHERTY
Associate County Attorney
County Administration Building
Room 5121
Upper Marlboro, Maryland 20772
(301) 952-4124

APPENDIX A

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION DEVELOPMENT DIVISION

APPLICATION FOR APPROVAL OF PRELIMINARY SUBDIVISION PLAT

(Submit one application form to the Prince George's County Subdivision Office)

The undersigned hereby applies for approval by the Prince George's County Planning Board of the accompanying preliminary subdivision plat and certifies the information supplied herewith to be correct.

Named of Proposed Subdivision "Marlborough House"

Lot & Block Nos. Lot 1

Location

Upper Marlboro Prince George's 3rd
(Town or Locality) (County) (Election Dist.) (Special Tax Area)

Proposed Use of Property Commerical

Geographical Location Upper Marlboro, Maryland

Zoning CSC

Existing Proposed

No. of Lots Proposed 1 Fee $262.00

Proposed Sanitary Facilities SA-1 SA-1
Water (Sewage Disposal)

Owner Jess J. Smith, Jr. et. ux (Office) 627-8200
(Name) (Telephone Number)

14718 Main Street, Upper Marlboro, Maryland 20772-0519
(Address)

Title Citation (last recorded conveyance):

Grantor Mattie P. Bowling, et. al.
Grantee Jess J. Smith, Jr. et. ux
Area of Tract as Conveyed 1.1580 Acres
Date of Conveyance April 2, 1977
Land Records Reference L-4745/F-805
Area Included on plat 0.5522 Acre

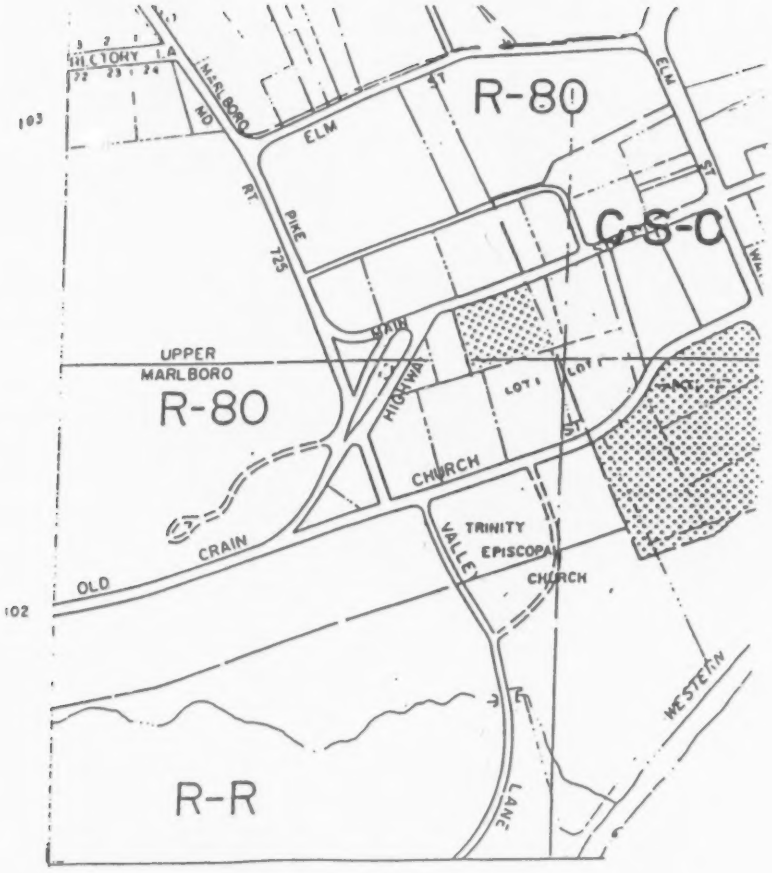
Existing Legal Encumbrances:

Rights of Way L-1827/F-468
Easements None
Other None
Existing Covenants None
Engineer/Surveyor
Name Baldwin & Sampson, Inc.
Address 7900 Old Branch Avenue, Suite 205, Clinton, Maryland 20735
Telephone No. 856-1800

Note any further proposals or unusual conditions affecting the property using the reverse side of this page.

SIGNATURE OF OWNER: /s/ Jess J. Smith, Jr.

APPENDIX B



207 SE 13

BASE MAP LATEST UPDATE 8-22-88

ZONE MAP LATEST UPDATE 5-1-89

SMA ADOPTION DATE PA 79 7-12-77
PA 82A 7-12-77

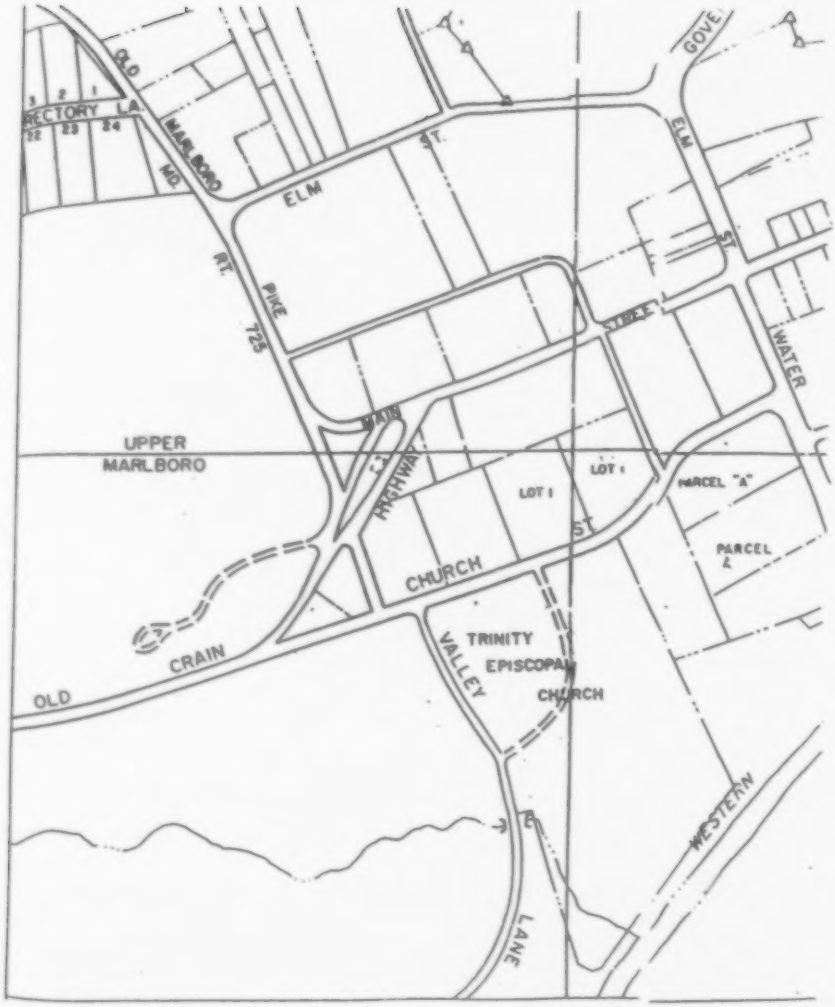
207 SE 13L

The N
Park /

A-7

BEST AVAILABLE COPY

APPENDIX C



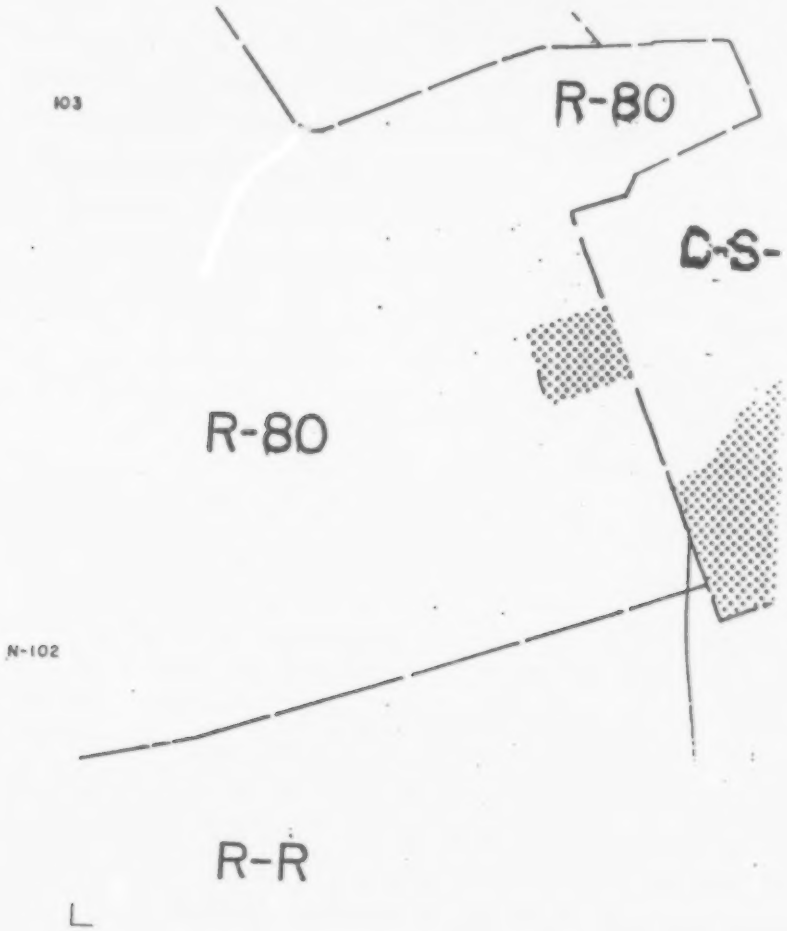
207 SE 13

BASE MAP LATEST UPDATE _____

Court 924

The Mary

APPENDIX D



ZONE MAP LATEST UPDATE 5-1-89

SMA ADOPTION DATE PA 79 7-12-77
PA 82A 5-12-77
207 SE 13L

J-2

APPENDIX E

THE MARYLAND-NATIONAL CAPITAL PARK
AND PLANNING COMMISSION

6600 Kenilworth Avenue
Riverdale, Maryland 20737-0707

LEGAL DEPARTMENT
(301) 699-2577

May 1, 1990

Jess Joseph Smith, Esquire
P.O. Box 698
Upper Marlboro, MD 20772

RE: *Smith et al. v. M-NCPPC,* CAE 89-24602

Dear Mr. Smith:

This letter will put to writing our conversation of the letterhead date, in which I proposed to you that the Commission was willing to have your property surveyed by an independent surveyor, at its cost, in order to verify whether your property is located in a split-zoning classification. It was anticipated that an independent survey would resolve this matter once and for all. Notwithstanding this proposal, however, you stated that you would not agree to the survey, and that you would prefer to have the court make a determination on the matter.

On a different note, this office has learned that you have contacted the Honorable Kirk Wineland, a member of the Prince George's County District Council (which you have named as a co-defendant in this action), regarding the merits of this case. As you are aware, the District Council is represented in this action by Ms. Joyce A. Birkel. Furthermore, as an attorney practicing in this

county, you should also be aware that such contact without the consent or knowledge of counsel is prohibited. Thus, it is requested that you make no further contact with any of the defendants in this action, absent the consent of respective counsel. Failure to comply with this request will result in a motion to the court for an injunction and sanctions.

Should you have any questions regarding these matters, you may contact me at the above-listed number.

Sincerely,

/s/ Isaac H. Marks
Isaac H. Marks
Associate General Counsel

enc.
cc: Elizabeth M. Hewlett, Esq.
Joyce A. Birkel, Esq.
Albert J. Lochte, Esq.

APPENDIX F

LAW OFFICES OF

JESS JOSEPH SMITH, JR.

P.O. BOX 698
UPPER MARLBORO, MD. 20772
(301) 627-8200 FAX 627-4506

May 4, 1990

HAND DELIVERED THIS DATE

Isaac H. Marks, Esq.
Associate General Counsel
M-NCPPC
Room 4134, CAB
Upper Marlboro, MD 20772

Re: Smith, et vir. v. MNCPPC, et al.
CAE 89-24602

Dear Mr. Marks:

With respect to your letter dated May 1, 1990, mailed May 3, 1990, and received on May 4, 1990, I am attaching a copy of my letter dated and delivered to Councilman Wineland of April 30, 1990, that indicates that I was totally unaware that Councilman Wineland was negotiating any settlement with MNCPPC on my behalf.

Needless to say, I was shocked to find out that my "general grousing" to him while, as I characterized it in the noted letter to him, resulted in him taking some action.

For your information, I did not seek out Mr. Wineland, but saw him in the hallway of the Courthouse sometime during the week of March 12, 1990, during a break when we both had petit jury duty and, at that time, com-

plained to him generally about the poor judgment of MNCPPC in taking the position that they are taking with respect to the development of the property that is the subject of the noted lawsuit.

If you have any questions in this regard, please do not hesitate to contact me.

Respectfully,

/s/ Jess Joseph Smith, Jr.
Jess Joseph Smith, Jr.

JJS:pmc

HAND DELIVERED COPY TO:
Elizabeth M. Hewlett, Esq.
Joyce A. Birkel, Esq.
Albert J. Lochte, Esq.

Enclosure: as indicated

APPENDIX G

IN THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY, MARYLAND

CASE NO. CAE 89-24602

MAENETTE B. SMITH, *et vir.*,

Plaintiffs,

vs.

MARYLAND NATIONAL CAPITAL
PARK & PLANNING COMMISSION, *et al.*,

Defendants.

Wednesday, July 19, 1995

Deposition of

ROSCOE TIPPETT,

a witness, called for examination by counsel for the Defendants, pursuant to Notice, at the offices of The Maryland National Capital Park and Planning Commission, County Administration Building, Upper Marlboro, Maryland 20772, commencing at 10:51 a.m., there being present on behalf of the respective parties:

* * *

[4] been practicing surveying since the age of 16.

Q. And where are you licensed as a surveyor?

A. I'm licensed in Maryland and Virginia.

Q. Are you familiar with the – strike that.

Let me back up to say that – have you had your deposition taken before?

A. Yes, sir, I have.

Q. If I ask any questions that you're unfamiliar with, please stop me and let me know that you're unclear on what I'm asking, and I'll be glad to rephrase it.

A. Yes, sir.

Q. Are you familiar with Jess Joseph Smith?

A. Yes, sir, I am.

Q. And did you have occasion to work with him, or to survey some property owned by him in Upper Marlboro, approximately 1985?

A. Yes, sir.

Q. And how did that come about; that you were brought in to survey that property?

A. Mr. Smith had purchased – as memory serves me, Mr. Smith had purchased the house and property. And he * * *

* * *

[12] there's a distance written on here. As you can see, it's – these plats are on a 1-inch equals 200 scale. So we pop a scale out, and we get 140 feet there, and we get approximately 140 in the back.

Q. And what do you measure from?

A. I measured from this lot line that they show on the zoning plat as being the division line between Mr. Smith's property and – I can tell you the owner's next door was Gore; an H.R. Gore annex at that time. And I determined that, and measured over to set this line.

Q. Okay. Are you aware that the zoning line measures from the center line of Water Street?

A. No, I'm not. There's nothing on this plat that indicates a setback. On zoning plats, since this case that I've testified in before, the new zoning plats that I see come out, they do give me definite lines. From Water Street – well, not from Water Street, but from roads

back. I have noticed that. On this plat, there's nothing delineated to say that.

Q. Did you obtain this plat, or did Mr. Smith bring you Tippett Exhibit No. 1; if you recall.

* * *

REFERENCE TO LODGINGS

The following items were submitted to the U.S. Supreme Court Clerk's Office as Lodgings as part of this Respondent's Brief In Opposition:

- Lodging No. 1 – Subdivision Plat Map for Lot 1 - Content.
- Lodging No. 2 – Subdivision Plat Map for Lot 2 - Marlborough House